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FILED IN THE
U.S. DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON
AT SPOKANE

CITY OF SPOKANE, a municipal
corporation,

Plaintiff,

v.

UNITED NATIONAL INSURANCE
COMPANY, a foreign corporation;
LEXINGTON INSURANCE
COMPANY, a foreign corporation; and
GENESIS INSURANCE COMPANY, a
foreign corporation,

Defendants.

No. CS-01-0069-WFN

DEFENDANT GENESIS
INSURANCE COMPANY'S
MOTION FOR SUMMARY
JUDGMENT AND STATEMENT
OF FACTS

Defendant Genesis Insurance Company ("Genesis") moves for summary judgment pursuant to Fed. R. Civ. P. 56(c) and LR 56.1.

For purpose of this summary judgment motion only, Genesis submits the following undisputed facts.

The Colbert Compost Facility

1. On June 22, 1993, plaintiff City of Spokane ("City") entered into a contract with O.M. Scotts Company ("Scotts") and the County of Spokane ("County") to design, construct and operate a compost facility to be known as the Colbert Compost Facility ("the Compost facility"). See City's Complaint for Declaratory Relief and Damages ("Complaint"), p. 2, ¶ 3.3, attached as

1 Exhibit A to the Declaration of Michael J. Balch in support of Genesis Insurance Company's
2 Motion for Summary Judgment ("Balch Declaration").

3
4 2. The compost facility went into operation on November 15, 1993. See Complaint, p. 2, ¶
5 3.3.

6 The Walmsley Lawsuit

7 3. On April 14, 1997, a lawsuit was filed against the City, Scotts and the County by
8 homeowners in the vicinity of the compost facility. See Walmsley, et al. v. City of Spokane, et al.
9 Complaint for Damages and Injunctive Relief ("Walmsley Complaint"), attached as Exhibit 1 to
10 Exhibit A of the Balch Declaration.

11
12 4. The Walmsley plaintiffs alleged that the compost facility had been emitting foul,
13 offensive, noxious and otherwise unreasonable odors causing injuries to plaintiffs and their
14 properties from the time that the facility began operating. See Walmsley Complaint, pp. 3-4, ¶ 3.3.

15 5. The Walmsley plaintiffs asserted four causes of action arising from the emission of the
16 odors from the compost facility: nuisance, trespass, negligence and inverse condemnation. See
17 Walmsley Complaint, pp. 4-6, ¶¶ 4.1-4.9.

18
19 6. The Walmsley plaintiffs sought monetary relief for the damages caused by the emission
20 of the odors and an order enjoining the operation of the compost facility in order to fully abate the
21 emission of the odors. See Walmsley Complaint, p. 6, ¶¶ 5.2-5.3

22 The City's Claim For Insurance Coverage

23 7. Genesis issued an excess insurance policy to the City for the policy period from July 7,
24 1995, to July 7, 1996, under policy number YXB300335, a copy of which is attached as Exhibit B
25 to the Balch Declaration.

1 8. On July 23, 1998, the city wrote to Genesis to put it on notice of the Walmsley lawsuit.
2 See Complaint, p. 7, ¶ 6.1.

3 9. In October and November, 1998, Genesis advised the City that Genesis did not believe
4 the Walmsley lawsuit was covered by the Genesis policy. See Complaint, pp. 8-9, ¶¶ 6.11 and
5 6.13.

6 10. On December 11, 1998, Genesis denied coverage for the Walmsley lawsuit, based upon,
7 inter alia, the absolute pollution exclusion in the Genesis policy. See Exhibit C to the Balch
8 Declaration.
9

10 11. The absolute pollution exclusion in the Genesis policy reads as follows:
11

12 This insurance does not apply to: . . .

13 Bodily injury, personal injury, advertising injury or property
14 damage which would not have occurred in whole or part but for
the actual, alleged or threatened discharge, dispersal, seepage,
migration, release or escape of pollutants at any time

15 Pollutants means any solid, liquid, gaseous, or thermal irritant or
16 contaminant including smoke, vapor, soot, fumes, acid, alkalis,
chemicals and waste. Waste includes material to be recycled,
17 reconditioned or reclaimed.

18 Settlement of the Walmsley Lawsuit

19 12. On August 4, 1999, the City settled the Walmsley lawsuit for over \$4 million. See
20 Complaint, p. 10, ¶ 7.1; see also Settlement Agreement attached as Exhibit D to the Balch
21 Declaration.

22 The Instant Coverage Litigation

23 13. On February 8, 2001, the City filed the instant lawsuit, seeking coverage for the
24 Walmsley lawsuit from Genesis and the other insurer-defendants. See Complaint.
25
26
27
28

1 14. In its complaint, the City alleges that the definition of "pollutants" in the Genesis policy
2 is inherently ambiguous and that the compost facility does not release "pollutants." See Complaint,
3 pp. 9-10, ¶¶ 6.19-6.20.

4 The Instant Motion

5 15. The instant motion is brought by Genesis seeking summary judgment on the ground that
6 the City's claim for insurance coverage for the Walmsley lawsuit is barred by application of the
7 absolute pollution exclusion in the Genesis policy.

8 16. In support of the instant motion, Genesis relies upon the foregoing Statement of Facts,
9 the Balch Declaration and the accompanying Memorandum of Law.

10 Respectfully submitted this 28th day of November, 2001.

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12
13 STAMPER, RUBENS, STOCKER & SMITH

14 By: Thomas R. Luciani

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Genesis Insurance Company

17 Of Counsel:

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CERTIFICATE OF SERVICE

I hereby certify that on the 27th day of November, 2001, I caused to be served, by placing in postage prepaid envelopes a true and correct copy of the following, and mailing the same via U.S. Mail, a copy of Defendant Genesis' Motion for Summary Judgment & Statement of Facts, Declaration of Michael J. Balch in Support of Motion for Summary Judgment, and Defendant Genesis' Memorandum of Law in Support of Motion for Summary Judgment, and addressed to the following:

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 Rehman H. Bashey
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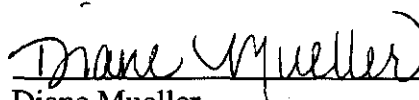
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